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ABSTRACT

This magazine aims to help high school teachers of civics, government, history, law, and law-related education program developers educate students about legal issues. This issue focuses on religious freedom in the United States. It contains 11 articles: (1) "Government-Religion Relations in Historical Perspective" (C. Cookson) discusses how differing views of order in colonial, 19th century, and modern times have formed the basis of the relationship between civil authority and religion; (2) "Religious Minorities and the Pressures of Americanization" (E. M. Mazur) discusses how Jehovah's Witnesses, Mormons, and Native Americans make choices within the U.S. constitutional order; (3) "A Variety of Attitudes toward Church-State Relations" (T. G. Jelen; C. Wilcox) presents the findings of a study suggesting that views of church-state relations in the United States are more complex than previously believed; (4) "Debate: Are Publicly Funded School Voucher Systems Constitutional or Not?" presents "Pro: A Case for Including Religiously Affiliated Schools in Publicly Funded Voucher Systems" (T. S. Collett) and "Con: The Inclusion of Religious Schools in Public Voucher Systems Is Unconstitutional" (C. Dubnoff); (5) "Students in Action" discusses debating church-state and related free speech issues, established churches in colonial times, the establishment clause, religious freedom and today's religious minorities, and the Santa Fe (New Mexico) school prayer or free speech case; (6) "Learning Gateways" provides a lesson plan and student activities; (7) "Supreme Court Roundup" (C. F. Williams) discusses two Fourth Amendment cases the Court takes up during the current term; (8) "News from Capitol Hill" (K. F. Fenske) reviews issues facing the 107th Congress; (9) "Teaching with the News" (W. B. Lewis; C. F. Williams) discusses what the law says about Internet filtering; and (10) "Media Specialist's Corner" (M. Kayaian) offers resource lists dealing with the journal's theme. (BT)

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# INSIGHTS

ON LAW & SOCIETY

*A magazine for teachers of civics, government, history, &c.*

# eligious Freedom in America

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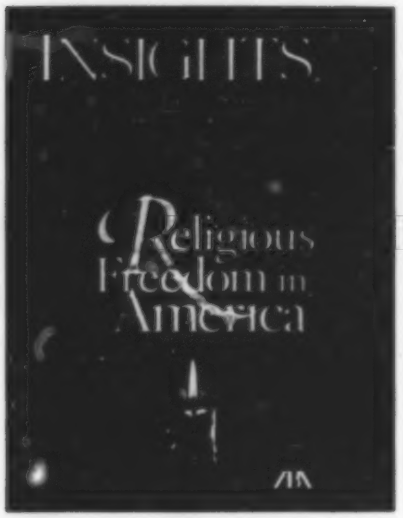


Religious freedom in America is a hard subject to teach—and a hard subject to learn. Visit our Web site to find out how this *Insights* edition gives teachers and students the tools they need to succeed.

*—Seva Johnson, Editor*

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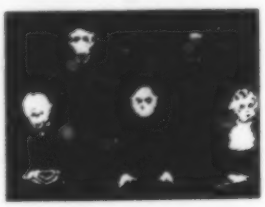

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*SPECIAL NEW FEATURE:*

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Religious Freedom in America

# Government-Religion Relations in Historical Perspective

*Differing views of order in colonial, nineteenth-century, and modern times have formed the basis of the relationship between civil authority and religion.*

**by Catharine Cookson**

Government exists to maintain and protect civil order. Law, and the enforcement of law, are the foundations of that civil order. Accordingly, at the heart of every issue of religious obligation versus state law lies the problem of order. The tension between law and religion might thus be approached through the question, "What is required for civil order?" In the United States, the response to this question has produced two complex approaches, distinct and yet joined as if partners in a dance.

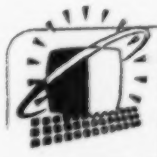
*"'What is required for civil order?'... the response to this question has produced two complex approaches, distinct and yet joined as if partners in a dance."*

## Setting the Stage: Anglicans versus Puritans versus Dissenters

To resolve the question of what is required for civil order, we must first define the term *order*. Within the Western tradition, four basic typologies of the relationship among religion, order, and the state have led to four different conceptions of "order," presented here according to chronology: (1) The "two kingdoms" type (Tertullian) holds that the good of civil order requires the secular and the sacred each to exercise the power and authority that belong to it alone. Serious disorder occurs when government regulation strays over into the jurisdiction of the sacred. (2) In the "duly-ordered relationships" type (Augustine), there is no conflict. All authority comes from God. God and civil order both require obedience to the civil authority. Otherwise, anarchy reigns. (3) The "levitical" type (Puritans) equates order with purity. Tolerance of "deviance" is a vice, not a virtue. (4) The "enlightenment" type (Locke) holds that order is achieved by moderation and balance: the essence of this type is an esteem for common sense and reasonableness.

Let's place these theories into the context of seventeenth- and eighteenth-century England and its American colonies. The Anglican Church was the established church of England and of several American colonies, including Virginia. Anglicans believed that civil order is achieved through obedience to higher authority (both civil and ecclesiastical), with the civil ruler (monarch) holding ultimate authority over both. Puritans believed in order as obedience, but more predominant was their levitical belief in order as purity. Thus, Puritans could condemn the Anglican Church's establishment while not advocating a broad freedom of religion, because Anglican theology and ritual were considered not biblically pure enough. Dissenters (Baptists such as Roger Williams, John Leland, and Isaac Backus among them) and other Christians such as James Madison championed the two kingdoms paradigm, criticizing any incursions by the government into religious matters. The government had no authority over religion and so by definition had created serious civil

*Catharine Cookson is assistant professor in religious studies and director of the Center for the Study of Religious Freedom at Virginia Wesleyan College in Norfolk, Va.*



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disorder by legal imposition of religious requirements such as tax support of religion. To this mix can be added the enlightenment rationale early advocated by William Penn and John Locke, and later by moderate enlightenment politicos and Founding Fathers such as Thomas Jefferson, etc. (and also including James Madison), who viewed order as reasonableness and moderation.

The tensions created by such disparate views of the relationship between religion and civil order ineluctably led to a showdown. In the early 1770's, Virginia authorities accosted and jailed Baptist Dissenters for "preach[ing] contrary to the laws and usages of the Kingdom of Great Britain" (Semple 481–83). The persecutions outraged and disgusted the young James Madison. Prevailing winds began to shift against all things authoritarian, and in 1776 the Virginia Declaration of Rights proclaimed that "all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity, towards one another."

*Puritans sought religious freedom in America.*

### The Virginia Statute for Religious Freedom: The Dance Begins

The Virginia Declaration of Rights did not resolve the issue of what is required for civil order, however. Patrick Henry and other leaders reasoned that since religion served the utilitarian purpose of making citizens virtuous, religion was thus necessary to civil order, and government support of religion therefore was, in turn, necessary and proper. To fill what he perceived to be a dangerous void left when Virginia disestablished the Anglican church, Henry introduced a bill to provide government tax support for teachers (ministers) of the Christian religion. The bill was what we today would call "non-preferentialist" in that it exacted a tax that went to the church of one's choice. He premised his arguments in both the duly-ordered authority type and the levitical type: need for obedience to paternal authority coupled with a tinge of levitical fear of the spread of anarchy from the lack of state-recognized church authority.

Madison and a groundswell of Christian dissenters wrote petitions opposing this bill, basing their arguments both in the two kingdoms (government had no authority or jurisdiction over religion) and the enlightenment type (government support of religion is corrupting and useless). As Madison and the Virginia Baptists understood the issue, the question was not whether religion is necessary to government, but whether government was necessary to religion. The answer: "No" (Noonan 62, 64). Henry lost this round, and Madison, going with the momentum, re-introduced a bill Jefferson had written back in 1777. The Virginia congress passed this bill in 1785, and it became the Statute of Virginia for Religious Freedom.

*James Madison*

### And the Beat Goes On...

Patrick Henry and James Madison expressed two distinct views of the relationship between religion and civil order. Their views have come to define two different traditions that persist down to the present day.

At the Virginia Ratifying Convention in 1788, the Henry tradition took the dance lead. Willing to compromise to get Virginia's vote for ratification, the Madisonian tradition acquiesced to Henry's move to submit a proposed amendment to the United States constitution. Henry's proposed amendment regarding religious freedom was a revision of the 1776 Virginia Declaration of Rights, leaving out "Christian charity and

forbearance" to all, and instead substituting a non-preferentialist establishment of religion. His language, however, did not make it into the final Bill of Rights.

The lead in this dance continued to be contested as the eighteenth century drew to a close. The Founding Era members of the Dissenter religious groups and others of the Madisonian tradition were dying out just as the Second Great Awakening began to reap a harvest of souls for evangelical churches that had benefited from the new free marketplace of religion. As eighteenth-century dissenting sects rose to a culturally

*Patrick Henry*

dominant position in the nineteenth century, they looked more and more approvingly on the Henry tradition, which now became the dominant partner in the dance. (See, for example, Joseph Story's *Commentaries on the Constitution*, 1833.) Although left a weakened partner, the Madisonian tradition nonetheless did not leave the dance. For example, the House Committee on the Judiciary in 1874 rejected a petition to amend the Constitution to include an "acknowledgment of God and the Christian religion," reasoning that the Founders envisioned this country as a haven for all, whether Christian or pagan.

The dance continues in the Supreme Court today, and the bewildering array of positions taken by the Court on free exercise issues might in part be explained by the persistent influence of the two

## Can Schools Encourage Students to Pray?

**by David Schimmel**

This was the issue confronted by the U.S. Supreme Court in a Texas case concerning student-led prayers at high school football games. The case arose after a series of incidents in the Santa Fe School District that some parents believed were unconstitutional. Included

*Until 1962, it was customary for public schools to open each morning with prayer.*

in these incidents was the reading of Christian prayers at graduations and **football games.**

A Mormon and Catholic family went to federal court to halt these practices. The trial and appellate courts allowed Santa Fe to continue its "Prayer at Football Games" policy as long as the prayers were student-led, nondenominational, and nonproselytizing. The Supreme Court agreed to review the case to decide whether the football prayer policy violated the Establishment Clause of the First Amendment.

The Santa Fe District's prayer policy authorized two student elections. The first election decided whether an invocation and/or message should be delivered at football games; the second selected the student to deliver them. Santa Fe argued that the purposes of the policy were not religious but secular—to promote student expression and to solemnize sports events. It also argued that invocations should be protected by the Free Speech Clause of the First Amendment since they were private, individual student messages not written or controlled by a government official.

In a 6-3 decision, written by Justice Stevens, a majority of the Court rejected Santa Fe's "secular purpose" argument. *Santa Fe v. Doe*, 120 S.Ct. 2266 (2000). Judges, wrote the Court, have a duty "to distinguish a sham secular purpose from a sincere one." Since the policy allowed only one student to give only one kind of speech for the entire semester and prohibited minority views from being heard, it did not promote free speech. In addition, the invocations were not private speech since they were "authorized by a government policy and take place on government property at government-sponsored, school-related events." Furthermore, an invocation to foster solemnity is not permissible when "it constitutes prayer sponsored by the school."

While *Santa Fe* clearly outlawed school-sponsored prayer at athletic events (and an earlier Court ruling prohibited clergy-led graduation prayers), it is not clear whether student-led prayers are permissible at graduation ceremonies. Lower courts are divided on this issue. Since the High Court has declined to rule on this issue, teachers, students, and lawyers can only speculate about whether the justices will outlaw school-sponsored, student-led graduation prayers in the future just as they have condemned such prayers at football games.

*David Schimmel is professor of education at the University of Massachusetts in Amherst and visiting professor at Harvard's Graduate School of Education.*

traditions. The cleanest example of this persistence and the divergent results created under each is the pair of cases involving Jehovah's Witnesses' children punished for failing to salute the flag. Justice Frankfurter wrote the opinion for the Court in the first case, *Gobitis*, and relied heavily on themes from the Henry tradition: the bedrock of civil order is obedience to authority, and deference is owed to lawmakers to determine what is in society's best interests. Just a few years later, this opinion was overruled by the Supreme Court in the *Barnette* case. Under similar facts, the Court instead reasoned within the Madisonian tradition that the state itself had violated good order by going beyond its proper realm of authority to compel conscience (two kingdoms) and, furthermore, the requirement was unreasonable (enlightenment) because the practical goal of the flag salute law (instilling patriotism) could not be gained by the use of force.

*Patrick Henry argued before the Virginia Assembly for tax support of teachers.*

Outright government sponsorship and endorsement of religion have been struck down using the two kingdoms aspect of the Madisonian tradition in cases involving government-led prayer in public schools (*Engel v. Vitale* and *Lee v. Weisman*, for example), and the display of a lone Christmas creche in a government building (*County of Allegheny v. ACLU*). The enlightenment aspect of the Madisonian tradition (reasonableness and moderation forbid vendettas) can also be seen in cases in which the Court protected nondominant religious groups from laws targeting (as enacted or as enforced) their religious practices, such as the *Church of the Lukumi Babalu Aye* case ( ritual animal sacrifice targeted by a city ordinance). The Henry tradition is evident in cases in which order is defined as uniform obedience to legal authority, such as *Employment Div. v. Smith* (eliminated all free exercise exemptions, declaring that the right to religious liberty extends only to legal behavior), which revived the *Gobitis* rationale.

Perhaps it is time to admit that the holy grail of THE original founding intent simply is not a historically provable fact. Like our own era, the Founding Era was a complex time with nuanced trajectories of thought. Sorting out the relationship between religion and the state has never been a simple matter. Yet, we must keep in mind that one tradition secures the right to individuals, while the other seeks state involvement that leads to restriction and coercion.

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### See This Special Update!

The editors are pleased to announce the online re-issuing of David Schimmel's study, "From Consensus to Confusion: Should the Wall of Separation Be Demolished or Rebuilt?" which won the Educational Press Association of America's 1995 Distinguished Achievement Award. Originally published in *Update on Law-Related Education* 18.2 (spring 1994), the article is an analysis of the development and disintegration of Supreme Court Establishment Clause interpretations and the ensuing public controversy over separation of church and state. We are pleased also to re-issue online the teaching strategies that accompanied the original article, updated by their author Dr. Stephen A. Rose of the University of Wisconsin-Oshkosh.

### FOR DISCUSSION

How did Patrick Henry view the relationship between religion and civil order? How did James Madison view that relationship?

Which tradition—Henry's or Madison's—has most influenced the Supreme Court in modern times? Support your answer with examples.

Religious Freedom in America

# Religious Minorities and the Pressures of Americanization

*Jehovah's Witnesses, Mormons, and Native Americans make choices within America's constitutional order.*

by Eric Michael Mazur

It is generally considered axiomatic that, since the ratification of the First Amendment, the United States has been a land of both religious diversity and religious pluralism and that every member of every religious community is guaranteed by law the freedom to worship according to the dictates of his or her conscience. It makes for eloquent rhetoric and, by and large, within certain parameters it is true. But any historian of American religion will tell you that it hasn't always been true, and it is not entirely true even now.

## The Christianization of the Law

Since the late nineteenth century, the Supreme Court has acknowledged that religious adherents may believe whatever they want, so long as they obey the law, *Reynolds v. United States*, 98 U.S. 145 (1878). While this formula is defended as the bedrock upon which religious freedom in this country is built, it has actually had the effect of altering the behavior of religious communities who found that they could not believe what they wanted if they could not act on those beliefs. For example, believing that there are dietary restrictions imposed by God does not help the Orthodox Jew if she is unable to abide by the laws of kashrut. Behavioral limitations have eased over time, but they have always had as their core a basic Protestant tone, suggesting to religious minorities that they may behave as they wish, as long as it does not challenge the sensibilities of the dominant religious culture in America.

The problem is not necessarily one of deliberate bias, but of the cultural presumptions brought to the acts of making and adjudicating law. For example, though most Americans defend the First Amendment as a document free of bias toward any one religious tradition, those who have been empowered to legislate and adjudicate its meaning—the American constitutional order—bring to their work the cultural biases of their own particular cultural identities, including religious biases.

It should not surprise us, then, that because of the political dominance of mainstream Protestants in the early stages of federal and state constitution writing, minority religious traditions found themselves at a distinct political (and as a result, religious) disadvantage (Marini 1994; Wilson 1990). Even into this century, Protestant cultural assumptions have been operating behind the making and adjudicating of American constitutional law more recently than most people are often willing to acknowledge.

## Religious Communities and Strategies of Balance

Through the First Amendment, the American constitutional order defines the limits of religious behavior for those religious communities that were historically unable

*Eric Michael Mazur is an assistant professor of religion at Bucknell University in Lewisburg, Pa.*

*"What is significant [is identifying patterns that] teach us about the limits of religious freedom in a democracy."*

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to have been a part of the agreement allowing the majority to make the rules—by either choice or design. Because of the real consequences of defying the constitutional order, religious communities who may simply want to be left alone have to submit to its dictates—unless they wish to emigrate or live in violation of the law. By agreeing to such an arrangement, in which the dictates of religious conscience may be limited by the dictates of the constitutional order, minority religious communities begin the dance between the two competing ultimate authorities—their deity and the American constitutional order—that seems to elicit only three steps: the religious community can convince the constitutional order that it is in line with its dictates ("congruency"); it can bring particularistic religious habits to the standards of the constitutional order ("conversion"); or it can defy the order and maintain the superiority of its own particularistic traditions ("conflict"). What is significant in identifying these patterns is what they teach us about the limits of religious freedom in a democracy.

**Congruency** The notion of congruency is best exemplified by the encounter of Jehovah's Witnesses with the American constitutional order. From its earliest years, this organization had understood the world to be under the control of Satanic forces, making participation with any government a capitulation to evil. From 1940 to 1960 (the Witnesses' period of greatest Supreme Court litigation), the organization's legal office argued 53 cases before the Supreme Court, winning nearly 70% of them. More amazing than their winning percentage, however, is the fact that more often than not, the winning cases used arguments based (at least in part) on free speech—those that relied solely on arguments of religious free exercise were singularly unsuccessful. This pattern suggests that the Jehovah's Witnesses were able to maintain their religious practice by translating them for the non-Witness world. The primarily mainstream Protestant sensibility of the American constitutional order (in this case, in its application to a First Amendment conceptualization of religion) could be maintained.

*Religious practices of all faiths and all denominations are protected by the First Amendment.*

**Conversion** The litigation history of the Church of Jesus Christ of Latter-day Saints (Mormons) best illustrates the "conversion" strategy. In 1862 Congress passed the Morrill Act making the public but limited Mormon practice of plural marriage a federal crime. What became a test of wills was ultimately decided when the federal government (after years of increasing territorial, judicial, and military control) passed legislation threatening to liquidate the financial and real estate holdings of the Church. By 1890, wishing to maintain some semblance of his religious community, Church President Wilford Woodruff announced what has come to be known as the "Woodruff Manifesto," finally clarifying the official Mormon position against plural marriage. But just as importantly, the leadership of the Church was officially disestablished, and the hope for a Mormon state of Deseret was dismantled. After a period of adjustment (that included political attacks against two Mormons elected to Congress), Mormonism settled into the American constitutional order: Utah became a state, and Mormonism became what Leo Tolstoy would call "the American religion"(Hansen 1967).

**Conflict** Native Americans' maintaining traditional religious practices provides an illustration of the "conflict" strategy. Unrecognized culturally, politically, and religiously, Native Americans began their relationship with the American constitutional order as an external threat but shifted to an internal burden by the 1870s. Confounding the problem further was the inability of adherents of the two religious systems (based on entirely different presuppositions) to communicate effectively to each other. By the time Native American land claims based on religious observance were permitted to be brought through the federal court system, there was no way to translate the differences between a predominantly Protestant American culture and traditional Native American religious practice. The first free exercise case involving Native American religious claims over land was *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988). Native American religious claims over land have continued and have generally been unsuccessful.

## Conclusions

It is important to remember that all three of the religious communities mentioned above have gone through all three strategies and have been used only to illustrate the particular strategy that might best characterize their profile with regard to constitutional litigation at the highest level.

Nonetheless, examination of the reactions of these three communities is valuable for what they reveal about the relationship between minority religious traditions and American culture, and they provide us with great insight as we examine the principles of religious freedom in this country. First, those religious communities who are closer to general Protestantism seem to have a better chance of success balancing their religious needs with those of the constitutional order. Second, the nature of the constitutional order seems to play a part in the nature of the encounter with minority religions.

Ultimately this begs the question of where this all leads. As American society becomes even more diverse, it is unlikely that minority religions will face the dilemma of balance in quite the same way as Jehovah's Witnesses, Mormons, and Native Americans have. But the markers for future religious communities are still there, particularly in the increasing sensitivity of the American constitutional order toward threats to its territorial authority. Ironically, this challenge is most likely to come not from overseas, but from ultraconservative Protestant communities (such as the Christian Identity movement) who feel that, in moving away from its Protestant roots, the American constitutional order has forsaken its theological heritage and who are dedicated to the use of violence (if necessary) to re-establish it. This bodes well for traditional religious minorities whose religious ideology includes pacifism or a system of rewards in a later state of being (heaven or the like).

## FOR DISCUSSION

To satisfy the dictates of the American constitutional order, some religious communities may choose "congruency." What does that mean?

Why is Mormonism's "Woodruff Manifesto" an example of "conversion?"

How do Native Americans' religious claims over land demonstrate the "conflict" strategy?

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## Public Attitudes on the First Amendment and Freedom of Religion

The following data were gathered by the "State of the First Amendment 2000" survey, conducted for the First Amendment Center by the Center for Survey Research and Analysis at the University of Connecticut and funded by the Freedom Forum. A total of 1,015 interviews were conducted with adults aged 18 or over. For more information, visit www.freedomforum.org

- 63% of those surveyed believe the amount of religious freedom in the United States is "about right." However, an increasing number of respondents believe that there is too little freedom of religion. In 1997, 21% said there was inadequate religious freedom. In 1999, the figure was 26%, and by 2000, it had grown to 29%.
- 72% feel that the freedom to worship applies to all religious groups, regardless of how extreme their beliefs might be.
- There has been a steady increase in those who strongly agree that public school officials should be able to lead prayers in schools. In 1997, 37% believed in school prayer. By 2000, the figure was 48%.
- 81% agreed that "it's OK for a prayer to be said at a high school graduation if a majority of the graduating class favors it."
- 64% agreed that "students should be allowed to lead prayers over the public address system at public school-sponsored events."
- 61% agreed that "local school officials should be allowed to post the Ten Commandments on the wall of a public school classroom."
- 64% agreed that "parents should have the option of sending their children to religious schools ... using 'vouchers' or 'credits' provided by the federal government."
- 75% agreed that "a public school teacher should be allowed to use the Bible as a form of literature in an English class."
- 85% agreed that "a public school teacher should be allowed to use the Bible as a text in a comparative religion class."
- 56% agreed that "a public school teacher should be allowed to use the Bible as a factual text in a history or social studies class.

Religious Freedom in America

# A Variety of Attitudes Toward Church-State Relations

*Findings of a study suggest that views of church-state relations in the United States are more complex than previously believed.*

by Ted G. Jelen and Clyde Wilcox

## Background

In recent years, many analysts have suggested that American politics has come to be dominated by a religious/cultural cleavage that may supplant political differences based on economic issues. The concept of a "culture war" has been advanced, one that may pit the religious against the not-so-religious "progressives" (Kellstedt, "It's the Culture," 1994; "Religious Voting Blocs," 1994) or the religiously "orthodox" against "progressives" (Hunter 1991).

If the culture-war metaphor accurately describes the conflict surrounding church-state issues, then these should pit the religiously orthodox against secular citizens who oppose a public role for religion in the United States. The purpose of this study is to examine attitudes among American mass publics toward constitutional questions raised by church-state relations and ultimately to seek to understand whether the term *culture war* accurately describes conflict involving the political role of religion.

*"Do culture wars increasingly divide American society into orthodox and progressive camps?"*

## Clauses & Camps

Two camps with opposite interpretations of the Establishment Clause of the First Amendment can generally be termed accommodationist and separationist (Cord 1982; Bradley 1987):

- Accommodationists believe that the Establishment Clause should be narrowly read and that it merely prohibits preferential treatments of particular religions.
- Separationists tend to argue that the Establishment Clause essentially privatizes religion, placing a "high wall" of separation between church and state (Pfeffer 1967, 1979; Levy 1986).

Similarly, there are two general interpretations of the Free Exercise Clause: communalist and libertarian.

- Communalists argue that government may not single out religion for particular regulations (Way & Burt 1983; Reichley 1985).
- Libertarians would require for religious belief and practice to be accorded special protections against legal regulation (Robbins 1993; Brisbin 1992).

## Fourfold Typology

Of course, the actual practice of First Amendment law is not nearly so neat or consistent as these four descriptions might suggest. Given a certain degree of over-

*Ted G. Jelen is professor and chair of political science at the University of Nevada at Las Vegas. Clyde Wilcox is professor of government at Georgetown University in Washington, D.C.*

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simplification, a typology of possible combinations of positions presented in Table 1 can be created.

## Results

**Christian preferentialists** most strongly favored government support for religion, including distinctively high levels of support for school prayer, school instruction in Judeo-Christian values and creationism, moments of silence, and public displays of the manger scene. They were less supportive of accommodation of non-Christian groups as well as of religious free exercise for such groups. This cluster was disproportionately composed of active members of doctrinally orthodox Protestant churches, people holding conservative religious identities, and born-again Christians who believed the Bible to be literally true; half of all white evangelical Christians fell into this cluster.

**Religious nonpreferentialists** were distinctively supportive of free-exercise rights for Christians and non-Christians as well as the rights of children to wear religious headgear, Hare Krishnas to solicit at airports, and Christian Scientists to withhold medical treatment from their children. Perhaps surprisingly, this group did not contain many white evangelical Protestants but was instead composed mainly of well-educated white Catholics and very liberal black Pentecostals.

**Religious minimalists** were distinctive in their opposition to allowing student religious groups to use school property for their meetings as well as most controversial forms of free exercise. Although this pattern initially appeared to be a generalized pattern of opposition to all public forms of religion, in fact, the individuals in the cluster were quite high in frequency of church attendance, orthodox religious identities, belief in the Bible's literal truth, and education. They were somewhat more likely than other clusters to be found in Baptist and Pentecostal churches, leading one to suspect that many minimalists are motivated by separationism—a theological belief that good Christians should be separated from the secular world's sinfulness (Jelen 1987; Peshkin 1986).

**Religious free marketeers** were easily identifiable. They were distinctive in their opposition to government aid to religion and the least likely to favor public religious display of the menorah and manger scene and funding for military chaplains of any religious affiliation. On non-Establishment Clause issues, however, they supported the free-exercise rights of both Christians and non-Christians. This cluster was quite secular, well-educated, and disproportionately Jewish.

## Conclusions

The results of this study suggest that accounts of the American political culture that are based on a dualistic cleavage between the religious and the less religious may be oversimplified. All four possible combinations of church-state attitudes are represented empirically, thus exhibiting a different pattern than

**Table 1. Fourfold Typology**

| Combination | Cluster | Position |
|---|---|---|
| **Accommodationist-communalist position** | Christian preferentialists | Would not object to certain forms of government assistance to Christian churches and would be willing to restrict at least some free-exercise prerogatives of non-Christians |
| **Accommodationist-libertarian position** | Religious nonpreferentialists | Would favor neutral government assistance and affirmation of religion but would allow all kinds of religious groups to participate in the public square |
| **Separationist-communalist position** | Religious minimalists | Would not value a strong religious presence in public life; might argue that religion deserves no special protection and government should not support religious expression |
| **Separationist-libertarian position** | Religious free marketeers | Would favor permitting a variety of religious groups to compete for adherents (Finke & Stark 1992) while government remains entirely nonsupportive |

*The purpose of this study is to examine the empirical adequacy of this fourfold typology: To what extent are attitudes toward religious accommodation and free exercise related? Do culture wars increasingly divide American society into orthodox and progressive camps? Do most Americans fall into either religious nonpreferentialist or religious minimalist categories, or are all four cells of the typology inhabited?*

that which would be predicted from a dualistic conceptualization of the mass public.

Most important, the four clusters' composition suggests that cultural conflict in America is more complex than previously believed. Contrary to the claims of Christian Right elites, white evangelicals tend to oppose free-exercise rights for non-Christians: while the highly secular religious free marketeers are indeed opposed to moments of silence, public prayers, and displays of Judeo-Christian symbols, they are generally supportive of free-exercise rights of Christians where no establishment issues are involved, and they are the most willing to protect religious liberties of nontraditional groups.

Further, the study offers convincing evidence that such patterns represent the expression of genuinely complex and nuanced attitudes and that they do not indicate a lack of cognitive sophistication on the respondents' parts. Finally, and somewhat surprisingly, religious minimalists are not secular citizens who wish to limit religious influence, but rather many are highly religious evangelicals who appear to embody an attitude of religious separationism.

**"Yes, son, faith can move mountains, but first you have to clear it with the EPA."**

From the *Wall Street Journal*—Permission, Cartoon Features Syndicate.

## FOR DISCUSSION

Why do the authors think that the labels *accommodationist*, *separationist*, *communalist*, and *libertarian* do not accurately describe church-state attitudes among Americans?

What finding of the authors' study did you think was the most surprising or interesting? Why?

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5.1 14

Even Experts Disagree

*Are publicly funded school voucher systems constitutional or not? Here, analyze the points made by two debating experts.*

PRO

# A Case for Including Religiously Affiliated Schools in Publicly Funded Voucher Systems

**by Teresa Stanton Collett**

There is a widespread perception that public schools are failing to properly educate a substantial number of their students. Many members of the public are looking for solutions outside the public education system. At the state level, 36 states now allow the establishment of "charter schools." Vouchers programs are also increasing across the country.

Such strong political momentum has caused one commentator to observe that "debates over 'public school choice' have focused less on the desirability or undesirability of the concept ... than on the details of implementation." Among these details is the hotly contested issue of whether to include religiously affiliated schools. Often discussed as a single concern, this issue is best addressed by separating the two questions inherent within it. First, is inclusion of religiously affiliated schools in a school choice plan desirable as a matter of public policy; and second, is such inclusion permitted under present judicial interpretation of the religion clauses contained in the First Amendment? The answer to both questions is "yes."

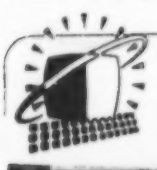
Inclusion of religiously affiliated schools in a school choice plan is desirable because it allows parents a fuller range of opportunities and philosophies from which to select when seeking a good education for their children. Since the basic purpose of education is to enable students to succeed as adults, it is critical for families and educators to have a shared understanding of what constitutes success.

As for judicial interpretation of the First Amendment, the U.S. Supreme Court has, in various cases over the last few decades, vacillated on the constitutional relationship among government, church, and education. It now seems clear that school choice programs may constitutionally include religiously affiliated schools if they are properly constructed. Three rules should be observed. First, parents or other nongovernment parties should determine where the funds should be applied. Second, participation should be determined by neutral criteria, with no incentive or disincentive to choose religious schools. Third, governmental regulation of educational providers should be kept to the minimum necessary to ensure the government's educational objectives are achieved.

*It now seems clear that school choice programs may constitutionally include religiously affiliated schools if they are properly constructed.*

*Teresa Stanton Collett is professor of law at South Texas College of Law in Houston.*

American political society was intentionally structured to ensure that individuals, families, and other voluntary associations, rather than the state, define the common good and the goals and ideals of the individual. Comprehensive school choice programs, including religiously affiliated schools, are the constitutional and desirable embodiment of our political commitment to structured liberty.



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CON

# The Inclusion of Religious Schools in Public Voucher Systems Is Unconstitutional

**by Caren Dubnoff**

Publicly funded school voucher systems have been instituted in a number of states and are generally defended on policy grounds. Proponents claim that vouchers will expand educational choice for all, including low-income children, and public education will improve as local schools compete for students.

But even if these claims are true, which is by no means clear, voucher programs must include only nonreligious schools because the use of public funds for tuition at private religious schools violates the Establishment Clause of the First Amendment.

The Establishment Clause provides that "Congress shall make no law respecting the establishment of religion," and it has long been incorporated via the Fourteenth Amendment to apply to state governments as well. The broadest question regarding the Establishment Clause is whether its essence is separation—the prohibition of government support to all religions—or something less than this, such as treating all religions equally or avoiding support that is coercive to individuals.

The separation interpretation was endorsed by a unanimous Supreme Court in *Everson v. Board of Education of Ewing Township* (1947), an opinion that barred taxation "to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion." Proponents of vouchers often assert that in recent years the Supreme Court has replaced the separation principle with a neutrality principle. Yet separation remains the operative principle.

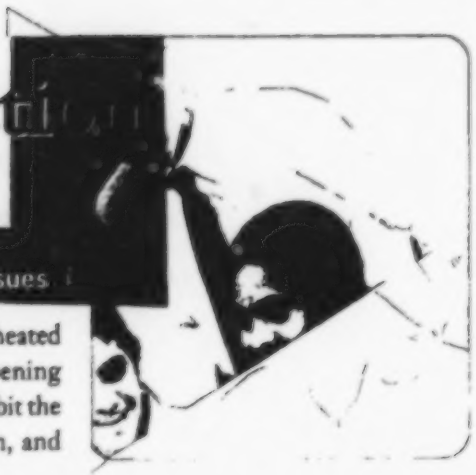
*Vouchers accomplish exactly what the Establishment Clause forbids—they provide substantial government aid to religion.*

*Caren Dubnoff is associate professor of political science at College of the Holy Cross in Worcester, Mass.*

Some proponents of vouchers contend that vouchers are permissible even under the separation principle since funds reach the coffers of religious schools only as a result of choices made by individuals. The Court has at times been more tolerant of programs that channel support to individuals rather than to religious institutions themselves. However, in these decisions the financial benefit to the religious school was minimal. Vouchers accomplish exactly what the Establishment Clause forbids—they provide substantial government aid to religion.

Finally, a few words about the policy arguments are in order. Religious schools, attracting (as they do) their own adherents, would divide society along religious lines, which many would find undesirable. Also, the presumed benefits of competition to public schools are largely unproved and quite doubtful. Any drain of students and resources from the public schools would also lessen the political support needed to reform these schools, leaving those who remain in a worse situation than previously and likely leaving society with an even larger problem.

# Students in Action



## Debating Church-State Relations and Related Free-Speech Issues

In this edition, Students in Action introduces you to a number of heated issues and high-profile Supreme Court cases involving the opening clauses of the First Amendment. These are the clauses that prohibit the establishment of religion, protect the free exercise of religion, and guarantee the freedom of speech, which is essential to both.

A glimpse back to the past in "Established Churches in Colonial Times" shows how dominant colonial groups like the Puritans established churches in American colonies despite the fact that they themselves may have fled religious persecution in Europe. In "Establishment Clause: Here's How to Understand It!" you will learn more fully just what an establishment of religion is and how the U.S. Supreme Court ruled in several important cases in which the "wall of separation" between church and state was said to have been breached. You'll also learn about two establishment issues that are getting heavy news coverage this year: school vouchers and public moneys for faith-based institutions to deliver social services.

Issues involving religious minorities haven't gone away—they have followed Americans through their history until today. In "Religious Freedom and Today's Religious Minorities," you will learn about a recent Florida conflict that illustrates how one small religious group's practices are protected by the Constitution even if they offend mainstream Americans. Another example from territorial Utah shows the opposite: how a stalemate can exist until a faith comes into compliance with what mainstream Americans believe. And continuing Native American attempts to have government protect their sacred grounds and artifacts underscore the extent to which the government might deny that protection.

The section ends with "*Santa Fe*: A School Prayer or Free Speech Case?" specially prepared by Dr. Bernard James of Pepperdine University. Here, you'll learn about the latest Supreme Court school prayer case and how the changing nature of school campuses might have influenced the decision.

Completing the *Take Action!* activities at the end of each section will help you begin to participate in and influence the public debates surrounding these and other religious freedom issues your generation will encounter. To do some of these activities, get ready to go online to insightsmagazine.org (click "Students in Action" when you get there)!

*The staff wish to acknowledge the special assistance of Margaret Fisher in preparing this feature for publication. An attorney/educator with many years' experience in teaching law to the public, Fisher is an adjunct professor at the Seattle University School of Law, and she also assists the state courts of Washington with educational programs.*

*"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech..."*

*—Opening Clauses of Amendment I to the Constitution of the United States*

For the full text of this student feature, go to

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## Established Churches in Colonial Times

As an American student, you don't need to go very far to find examples of established churches. They exist in the colonial history of your own nation, the United States.

Some colonies supported one church, called an *established church*, which received tax support from the colonial legislature. The Congregational Church was established by the Puritans in Connecticut, Massachusetts, and New Hampshire, for instance. Colonial church officials performed many of the roles that government agencies do today. For example, churches operated many schools, and a minister often held classes in his home. Most students had to pay fees, so most poor parents could not send their children to school at all. Instead, they taught their children at home. Besides learning skills that would help support the household, these young colonists had lessons in obedience and the family's religious beliefs. Generally, all colonists were deeply religious, and by far most belonged to the Protestant faiths—Anglicans, Puritans, Lutherans, for example. The custom of starting the school day with the Lord's Prayer and the psalms persisted in the nation's public schools until recent times.

Besides supervising education in the colonies, churches cared for the poor and kept public records such as those for marriages and deaths. Meetings were held in churches, which were used as community centers for courtship, socializing, and sharing news. Church laws governed colonial activity, and the courts enforced those laws. For example, one law sought to ensure that the Sabbath was observed by prohibiting any cooking, shaving, hair cutting, or bed making from Saturday afternoon to sundown on Sunday. *Blue laws* kept stores and businesses from opening on Sunday. Church officials assigned seating in churches according to sex, race, and wealth. Even slaves were allowed free time on the Sabbath.

Governments didn't accommodate the Jewish Sabbath, and other protections were routinely denied those who practiced nondominant faiths. In fact, colonial communities were often intolerant of religious minorities and would not allow them the freedom to follow their own beliefs. In most colonies, even voting and other political rights were restricted to members of a certain church group. Roman Catholics and Jews were not allowed to vote in most colonies. Puritans in New England denied citizenship to Quakers and others. In royal colonies like Georgia, citizens were expected to be Anglicans.

When the Bill of Rights to the U.S. Constitution was adopted in 1791, the First Amendment guaranteed that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This provision ensured that no one religion would be favored over another and protected religious groups from unfair treatment by the federal government. But it did not protect against unfair treatment by state governments. New Hampshire and other states passed laws until the mid-1800s that kept non-Protestants from holding public office. Connecticut, Massachusetts, and several other states declared official churches.

Since the 1940s, the Supreme Court has ruled that all states must uphold the First Amendment's religious freedom guarantees. However, disagreement abounds in the Court and in the public square regarding how strictly the Establishment Clause should be interpreted. The "accommodationist" viewpoint, simply put, holds that government accommodation or support of religion is not unconstitutional unless some sort of force or persuasion is involved. The "separationist" viewpoint contemplates a much stricter if not absolute separation of church and state. More recently, several justices, led by Justice Sandra Day O'Connor, have argued in favor of a third approach—a so-called "no endorsement" analysis. Under this approach, the Court would decide Establishment Clause claims by determining whether a hypothetical "reasonable observer" would view the challenged activity as sending a message that the government supported or endorsed the religious message.

**Take Action**

Research one of the American colonies to find out more about the official religion it may have established and how nonmembers were treated.

## Establishment Clause: Here's How to Understand It!

The Constitution forbids Congress from creating an establishment of religion, but what is an *establishment of religion?* One example is the declaration by Queen Elizabeth I of England (reigned 1558–1603) that Anglicanism, a form of Protestantism, was the official, government-supported church of England.

Large numbers of minorities fled to America to escape religious persecution. However, once these religious refugees established their own colonies, they created official churches and persecuted those who did not belong to their religion. (See "Established Churches in Colonial Times.") By the end of the 1700s, however, the resolve against having any national religion was strong enough to make this prohibition the very first right in the Bill of Rights.

Controversies over the appropriate relationship between government and religion persist today. Cases often come to the Supreme Court for resolution, and the Justices are frequently in disagreement as to how to interpret the law. A major challenge in these religion cases is for the government to keep apart from religion yet defend religious freedom, which includes both the right to worship and the right not to. Thus, government and religion can never be fully isolated from one another in the United States—that is, the "wall of separation" between them, as Jefferson called it, is not without a few doors.

School prayer is one religious freedom controversy. Might public schools, which are agencies of government, require the recitation of prayers? In 1962, the Supreme Court said no. Might public schools allow "student-led, student-initiated" prayer to take place before school games? In 2000, the Supreme Court again said no. (For details, see "*Santa Fe*: A School Prayer or a Free Speech Case?")

At the same time, judges have become more tolerant of the use of school facilities for religious activities that are not part of the school's curriculum. At one time, schools concerned with potential Establishment Clause violations tended to bar student religious groups from using school facilities. Congress passed the Equal Access Act of 1984 to ensure that they would be on equal footing with secular groups.

In 2000, *Mitchell v. Helms*, 120 S.Ct. 2530, asked whether religious schools could participate in a government program that lends computers, software, and library books to secular schools. The Court voted yes in a 6-3 decision, thus permitting the government to lend such equipment to students who are enrolled in religious as well as public schools.

A fierce national debate today is between those seeking to offer families alternatives to public schools through government provision of tuition vouchers, and those who consider this use of public educational funds counterproductive to the public school system's basic purposes. School voucher opponents contend that the Establishment Clause is violated whenever religiously affiliated schools receive vouchers financed by public monies. Proponents insist there is no constitutional problem so long as the parent or student is the one who decides where the money will be used. Though the legal arguments in different localities are essentially the same, the outcomes have varied sharply. The Supreme Court of Wisconsin upheld Milwaukee's voucher program in 1998, while in 1999 the Supreme Court of Maine came to the opposite conclusion.

Another establishment issue just now heating up is President Bush's proposal to allow more religious ("faith-based") institutions and secular charities to receive government money to provide social services. Critics argue that such a program would blur church-state separation and threaten the independence of such organizations, which will come under intensified government scrutiny if they receive public funds. Proponents point to the power of religion in changing troubled lives.

### Take Action!

1. Find out whether the public school in your area allows student religious groups to use school facilities for religious activities. What other groups are allowed to use school facilities?

2. What proposals or laws on school vouchers does your state or community have? Ask three adults what their views on school vouchers are and why.

## Religious Freedom and Today's Religious Minorities

Since the ratification of the First Amendment in 1791, it has generally been true that all Americans have been guaranteed the freedom to worship—or not to worship—according to the dictates of their own conscience. Discussions about limiting religious practices have mainly involved cases that have appeared strange in the context of mainstream American faiths.

One recent example occurred in Hialeah, Fla., a Miami suburb that enacted a law in 1987 prohibiting the ritualistic killing of chickens, pigeons, doves, ducks, goats, sheep, and turtles. The law was aimed at stopping animal sacrifice among Cuban immigrants who were practicing ancient customs of their African forebears' Santerian faith. When the Bill of Rights was adopted, most Americans were Christians, who may have known about animal sacrifice from their Bible readings but did not practice it at all.

Notwithstanding colonial Americans' lack of awareness about the wide variety of religions and religious practices around the world, the Founding Framers crafted the First Amendment's opening words to say that the "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech." This has provided religious minorities with some protections, yet these denominations have still often been caught between what their religions teach them to do and what the predominant American culture, through its control of legal and political institutions, expects—and even requires—them to do.

Today, about 60 percent of Americans are members of an organized religious group, with 52 percent Protestant and 38 percent Roman Catholic. A full 90 percent of those in religious groups are thus of Christian faiths. About 4 percent are Jews, and Mormons and Eastern Orthodox are about 3 percent each. This means that, statistically, those belonging to other faiths are a small fraction of 1 percent, including Muslims, Buddhists, Hindus, Shintoists, Confucianists, Taoists, Sikhs, Santerians, and Native Americans, among many others. A large number of Americans—40 percent—belong to no organized religious groups. Atheists and agnostics are among these.

*Principal Gary Causey listens as student Marian Ward delivers a public prayer before a high-school game in Texas.*

Minorities whose religious practices have come up against the dominant American culture have tended to have to change their religious behavior in some way despite their protections under the First Amendment. In part, this is because lawmakers and judges, while not necessarily biased, bring their own cultural outlooks, including religious orientations, with them to their work. Further, there is disagreement among scholars and judges over the extent to which the First Amendment protects particular religious "practices" as opposed to religious beliefs.

Also, minority groups feel the pressure to be part of their surrounding culture or to leave. In the 1800s, the new Mormon religion's members found themselves in repeated conflicts not only with the general population but also with the U.S. Congress, which opposed their practice of polygamy. By 1849, after suffering intense discrimination and violent attacks in the Midwest, the Mormons set up a civil government in the Great Salt Lake valley in what was to become the state of Utah. The Mormons of Utah weren't able to realize their ambition of becoming a state until 1896, six years after their church had outlawed polygamy. Such give-and-take among minority religious practices, mainstream Americans' expectations, and the American government has made for an interesting mix of approaches to remedying situations in which law and minority religions have seemed to be at odds. Here is how the interests of the dominant culture and those of the religious minorities were balanced in these situations.

The Hialeah animal sacrifice case discussed above was decided in the Supreme Court in 1993. In *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 113 S. Ct. 2217, city officials defended their ban on animal sacrifice based on public health and community moral standards. The church argued that the government permitted the killing of animals for many secular reasons, such as for hunting and fishing, and that banning religious ceremonial sacrifice is wrongful government infringement on their religion. The minister said that his religion should be institutionalized so that its practitioners could become part of mainstream America. The Supreme Court ruled in favor of the church.

Two Native Americans drug counselors lost their case, in which they claimed they were entitled to unemployment benefits after being fired for using peyote (a naturally growing hallucinogenic drug) as part of their traditional Indian religious ceremony. *Employment Division v. Smith*, 494 U.S. 872 (1990) went against the Native Americans when the Justices ruled that the employees were fired for cause, having violated a contract with their employer agreeing not to use illegal drugs. Writing for the majority, Justice Antonin Scalia held that religious practices, in this case, ceremonial use of peyote, are not exempt from "generally applicable" criminal prohibitions.

In 1993, Connecticut police brought charges against five Buddhists who had helped a fellow Buddhist burn himself to death in protest against the persecution of members of their faith in their native Vietnam. Apparently unaware that they were running afoul of the law—and determined to do well by their trusting friend—the five assistants videotaped and photographed the event, covered the corpse with a Vietnamese flag, and telephoned state police from a nearby restaurant so as to notify them of what had taken place. During a court hearing the five accused friends were admitted to an accelerated rehabilitation program. Admission to the program was not tied to entering pleas of guilt or innocence. If they remained conviction free for a year, all criminal charges related to assisting with the suicide were to be dropped.

Native Americans' claims over sacred lands have been largely unsuccessful. However, efforts to regain Indian skeletal remains from museums so that they can be properly buried have met with some success. The Native American Graves Protection and Repatriation Act of 1990 requires institutions receiving federal money to return human remains and any artifacts found with them to the tribes that want them, given that the tribes have proven they have a valid claim to them. In addition, on May 24, 1996, President Clinton issued Executive Order 13007, directing all federal agencies to accommodate and protect "Indian sacred sites" whenever possible.

**Take Action!**

**1.** If you were a public school principal and a group of Muslim students made these requests, what would you do? The students ask to be excused from school on their two main holy days during the school year. The female students wish to keep their heads covered with a head scarf, even though there is a no hats policy in the school. The students object to co-educational physical education classes.

**2.** Go online to find out which Native American reservations are within your state's boundaries. Do the tribes have sacred burial grounds? Have there been controversies over human remains and artifacts found in your state? What happened?

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*Santa Fe, continued from page 21*

**Take Action!**

As you think about the *Santa Fe* case, consider the following questions:

**1.** If you agree with the Supreme Court's decision, what school-district policies do you think the Santa Fe School District should consider next?

**2.** If you were a Santa Fe student who wished to participate in religious activities on campus, could you find a way to do so and still be in compliance with all five rules listed in this article? Why or why not?

## Santa Fe: A School Prayer or Free Speech Case?

*A perspective by Bernard James, professor of constitutional law at Pepperdine University in Malibu, Calif.*

**Case**

*Santa Fe Independent School District v. Doe*, 120 S.Ct. 2266 (2000)

**Facts**

A Texas public high school had a formal policy of allowing students, if they wished, to pray or give a non-religious message relating to sportsmanship or similar ideals before school football games. The American Civil Liberties Union and some parents objected that the policy was unconstitutional.

**Question**

Can a school district permit "student-led, student-initiated" prayer before high-school football games?

**Decision**

The Supreme Court voted 6-3 that, even when attendance is voluntary and the decision to pray is made by students, pregame prayers are not private speech, and a football game is not a public forum for unbridled free expression.

Discussions of public school prayer cases have become a head-scratching exercise. The Supreme Court decision in *Santa Fe* is the latest confusing case to come around.

On the surface of the school prayer debate is a remarkably simply question: if a student or group of students wishes to pray, should they have a right to do so? Unfortunately, one is quickly taken beneath the surface to an area of law where the correct answer to the question is yes and no.

Perhaps a better way to understand school prayer cases is to step back from the facts of *Santa Fe* and any prior case to look at the big picture of how much campus life has changed in America. It has undergone something of an expressive explosion, with a rich variety of cultures, thoughts, and interests having transformed most high schools into a marketplace of ideas.

Become acquainted with the five rules in the table. By applying them to what you've read so far about *Santa Fe*, you will see that this case is less about prayer in public school than it is about enforcing the free-speech rules to bring about fair and diverse access to the school's public address system by students wishing to speak on other subjects. The Court ruled that the policy that allowed student prayer before football games was flawed. The flaw was that prayer would always be approved, but other forms of student speech were far less likely to occur. The public address system was being used to express one type of expression to the suppression of all other types. This type of government-sponsored favoritism should always raise serious constitutional questions.

When the five rules are applied, student prayer is not forbidden on public school campuses. As long as it is allowed on the same basis as other forms of student-initiated expression, the Constitution is not violated.

*See* Take Action! *questions at the bottom of page 20.*

### See These Important Rules

*Santa Fe* is really an attempt by the Supreme Court to clarify the rules that schools must follow so that the marketplace of ideas on campus is protected and allowed to grow. Many of the rules were previously known, but the Court had not stated their precise relationship. At the present time, here are the rules that apply:

- Students do not lose their constitutional rights when they attend school. Expressive rights that are guaranteed under the First Amendment may be exercised on campus.
- Educators may allow the campus to be used for a wide range of student expression, even speech unrelated to the curriculum.
- Educators may interfere and limit student expression on any subject when it is disruptive or when it interferes with the educational process.
- When educators encourage student expression on issues unrelated to the curriculum, schools may not feature (force anyone to hear) the student-initiated speech in a way not available to other types of student expression.
- Educators are especially not allowed to feature only student religious speech, since government-sponsored religious speech is not allowed by the Constitution.

# Religious Freedom in America Learning Gateways Activities

## See Strategies Here

This department features teaching strategies that show you how to use the edition's materials to build students' critical concepts and skills. This strategy will help students consider the relationship of government and religion in the United States and apply what they discover to a current event. Follow it up by getting online at insightsmagazine.org for additional strategies by educational consultant Wanda Routier, adjunct faculty member at the University of Wisconsin-Milwaukee as well as at Marian College and Fox Valley Technical College, also in Wisconsin. And don't miss the student materials on related religious topics starting on page 16.

## Overview of the Lesson

**Objectives**

As a result of this lesson, students will

- Discuss fundamental ideas that underlay James Madison's and Patrick Henry's differing approaches to "civil order" in terms of religious and civil authority.
- Consider the extent of separation needed to maintain religious freedom.
- Address a present-day issue in terms of Madison's and Henry's approaches.

**Target Group: Secondary**

Time Needed: 4–5 classes plus research time

Materials Needed: Copies of the student handout, access to historical research and other resources, including articles on school vouchers

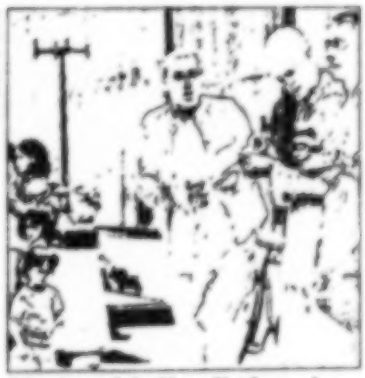
**Procedures**

1. Read the article by Catharine Cookson on pages 4–7 to familiarize yourself with the arguments raised by Madison and Henry about the proper relationship between church and state.
2. Furnish students with copies of the handout on page 23.
   a. Discuss the meaning of the religious freedom clause. Help students identify their beliefs about it. Ask questions to assess students' understanding: Can the government set up a religion? Can the government favor one religion over another?
   b. Extend the discussion to these questions: Can the government prevent you from practicing your religion? Can the government recognize religious beliefs and practices? Can the government ever pass laws that would outlaw or infringe upon a religious practice?
3. From the handout, have one student read the ideas that influenced Madison's approach to church-state relations as they related to civil order. Have another student read the ideas that influenced Henry. With students, analyze each set of ideas.
4. Examine a Supreme Court decision that deals with the right to religious freedom, such as the 1962 case *Engel v. Vitale*, in which the Court decided that schools could not require public students to recite prayers, and the 1984 case *Lynch v. Donnelly*, in which the Court determined that a community could display a nativity scene in a holiday display. (An online table of religious freedom cases to pick from is available at insightsmagazine.org. Click "Students in Action" and see activity 3 under the article titled "Established Churches in Colonial Times.") Encourage students to discuss the decision in terms of the issue, the arguments, and the decision. Ask them to consider whether the decision can be placed in the context of one of the approaches on the handout. If so, which one?
5. Divide the class into two teams—one for each approach. Choose a present-day issue that involves the separation of church and state, such as the granting of vouchers to parents for sending their children to the schools of their choice, including religious schools. Ask the groups to identify the issue and determine whether it should be considered constitutional based on their approach. Have a team representative present the viewpoint and explain why the issue should be resolved in this way, based on the team's interpretation.
6. Have students organize group findings into a chart. Discuss the following questions: Do the decisions differ? How does each approach affect the decision made? Why might a decision vary according to the philosophy held by a court? Do students agree with the decisions? Help students conclude that the approach used by the Supreme Court can impact its decisions.

## Student Handout

**Freedom of Religion Clauses First Amendment to the U.S. Constitution**

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech.*



Bettmann/CORBIS

*Members of the Hare Krishna cult dance for donations.*

**Ideas Influencing James Madison**

Religion is unnecessary to government. Civil order requires the secular and the sacred each to exercise the power and authority that belong to it alone. Order is achieved by moderation and balance, where common sense and reasonableness are held in high regard. Serious disorder occurs when government regulation strays over into the jurisdiction of the sacred. The government has no authority over religion and so by definition can create serious civil disorder by legal imposition of religious requirements such as a tax support of religion. No public monies should go to support any church.

**Ideas Influencing Patrick Henry**

All authority derives from the sacred source, so there can be no conflict between secular and sacred authority. Since religion serves the useful purpose of making citizens virtuous, it is needed to maintain the civil order and is therefore necessary to government. It follows that lack of state-recognized church authority could result in the spread of anarchy. While no one church should be given preference, a nonpreferential tax might be levied to support Christian ministers, for example, with the monies going to the church of one's choice.

*The editors gratefully acknowledge the Constitutional Rights Foundation (CRF) for furnishing resources used in this department. The CRF is a nonprofit, nonpartisan educational organization that provides law-related, civics, and service-learning programs and materials on a nationwide basis. Contact the CRF at (213) 487-5590 or visit www.crf-usa.org*

## Teaching Standards for This Issue

Religious Freedom in America

Teachers of civics, government, history, and law all over the country are working toward attaining the educational standards set forth by their local communities. To assist in this effort, each edition of *Insights on Law & Society* is designed to support national standards of major educational organizations such as the National Council for the Social Studies (NCSS), the Center for Civic Education (CCE), the National Center for History in the Schools, and the American Library Association (ALA). Listed here are national standards supported by *Insights*'s Religious Freedom in America Edition, as well as the organizations promoting them.

### National Standards for Social Studies Teachers (NCSS)

**Power, Authority, and Governance**

Social studies programs should include experiences that provide for the study of *how people create and change structures of power, authority, and governance*, so that the learner can

- compare and analyze the ways nations and organizations respond to conflicts between forces of unity and forces of diversity.

### National Standards for Civics and Government (CCE)

**Distinctive characteristics of American society**

- Students should be able to explain important factors that have helped shape American society, such as religious freedom.

**Character of American political conflict**

- Students should be able to describe political conflict in the United States both historically and at present, such as conflict about the role of religion in American public life.

### National Standards for History

**2B** The student understands religious diversity in the colonies and how ideas about religious freedoms evolved.

**2C** The student understands changing religious diversity and its impact on American institutions and values.

Religious Freedom in America

# Supreme Court Roundup

by Charles F. Williams

## Opening of the 2000–2001 Term

While the presidential election cases dominated the news of the first third of the 2000–2001 Supreme Court term, the Court was also pursuing its regularly scheduled docket of cases, including several Fourth Amendment cases that highlight important aspects of the Constitution's guarantee against unreasonable searches and seizures.

The Fourth Amendment provides that

> *The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

Thus the Fourth Amendment protects only against "unreasonable" searches and seizures. The question of *when* a search is unreasonable, like the question of *when* the police must obtain a warrant before conducting a search or seizure, has been the subject of much discussion in the courts, a trend that has only accelerated as the police seek new ways to wage the "war" on drugs.

### Drug War Technology: *Kyllo v. United States*, No. 99-8508 (to be argued Feb. 20, 2001)

By scanning the outside of a house with a thermal imaging device, police can determine whether there are unusual "hot spots" that may indicate the use of high-intensity grow lights, which are often used in indoor marijuana growing operations.

The question posed in this case is whether police must obtain a search warrant before using these thermal imaging devices to scan a home. Ultimately, the defendant says, the question is "whether the 4th Amendment's guarantee of personal security in your home must yield to scientific advances that make traditional barriers of privacy obsolete."

**The Case** Based on an informant's tip, the police looked at Danny Lee Kyllo's utility records and concluded that he was using an unusual amount of electricity. So they decided to scan his house with a thermal imaging device at 3 A.M. one January morning. The thermal imager did show a concentration of heat coming from the roof and one wall. The police used that information to obtain a search warrant, and when they searched the house, they found an indoor marijuana growing operation.

Kyllo argued that the police needed to obtain a search warrant before they could employ the thermal imaging device.

When the Ninth Circuit concluded that no warrant had been needed because the thermal scan did not amount to a search at all, Kyllo appealed to the U.S. Supreme Court. While the parties' briefs were not available at the time this article was written (see our Web site for updated links and more information), the dissent and majority opinions in the Ninth Circuit show that this case is developing into a battle of analogies. The Ninth Circuit judges compared the new thermal imaging technology to these other, more familiar situations in which they thought a reasonable person would or would not have a reasonable expectation of privacy:

- A camera
- A telescope
- Setting out the garbage
- Chimney smoke
- Putting a listening device on the outside of a phone booth

The dissent suggests that even if the current generation of thermal scanners might be crude in terms of what they can tell police about what's going on inside your house, the next generation of scanners might be far more intrusive.

## Summer Special

**Come to the Supreme Court Institute!**

The Supreme Court Summer Institute, a program co-sponsored by Street Law and the Supreme Court Historical Society, is open to secondary-school teachers of government, history, and law from across the United States and abroad. For more information, contact Street Law at (202) 293-0088, ext. 242 or www.streetlaw.org/scipage.html.

*Charles F. Williams is editor of* PREVIEW of U.S. Supreme Court Cases, *a publication of the ABA Division for Public Education in Chicago.*

**Drug Roadblocks: *Indianapolis v. Edmond*, No. 99-1030 (November 28, 2000)**

**The Case** The Supreme Court previously has upheld roadblocks to check for the presence of illegal aliens (*United States v. Martinez-Fuerte* [1976]) and to check for signs of impaired driving (*Michigan Dept. of State Police v. Sitz* [1990]).

In *Indianapolis v. Edmond*, the Court was asked to look at the use of police roadblocks for the purpose of interdicting drugs.

The case arose when the city of Indianapolis, Indiana, began setting up roadblocks on the highways to stop a predetermined number of vehicles. The officers at these roadblocks would ask for a driver's license and registration and then explain to the driver that he or she had been stopped at a drug checkpoint. The police looked for signs of driver impairment and then visually inspected the outside of the vehicle.

What made these roadblocks different from others that the Supreme Court has looked at in the past is that the city's (written) roadblock policy also emphasized that "a drug detection dog will walk around and examine every vehicle stopped at the checkpoint." If a dog "alerted," the police would then have sufficient probable cause to search the vehicle.

Some drivers in the Indianapolis area asked the courts to stop these roadblocks.

**The Decision** The Supreme Court ruled 6-3 in favor of the drivers and against the city of Indianapolis.

"Because the primary purpose of the Indianapolis checkpoint program is ultimately indistinguishable from the general interest in crime control, the checkpoints violate the Fourth Amendment" protection against unreasonable searches, Justice Sandra Day O'Connor wrote for the majority.

Chief Justice William Rehnquist and Justices Clarence Thomas and Antonin Scalia dissented. The drug roadblocks involved only a "minimal intrusion on the privacy" of the occupants of the vehicles, Rehnquist said.

One of the most intriguing opinions, however, was written by Justice Thomas, who wrote separately to say that although he agreed with the chief justice that the roadblocks had to be upheld under the Court's precedents, he would be willing to consider overruling those precedents. Taken together, Justice Thomas said: "... our decisions in *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990), and *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), stand for the proposition that suspicionless roadblock seizures are constitutionally permissible if conducted according to a plan that limits the discretion of the officers conducting the stops. I am not convinced that *Sitz* and *Martinez-Fuerte* were correctly decided. Indeed, I rather doubt that the Framers of the Fourth Amendment would have considered "reasonable" a program of indiscriminate stops of individuals not suspected of wrongdoing.

Respondents did not, however, advocate the overruling of *Sitz* and *Martinez-Fuerte*, and I am reluctant to consider such a step without the benefit of briefing and argument. For the reasons given by *The Chief Justice*, I believe that those cases compel upholding the program at issue here. I, therefore, join his opinion."

"The court respects your religious convictions, but you can't give your testimony speaking in tongues."

From the Wall Street Journal - Permission, Cartoon Features Syndicate

**Use Our Web Site as a Research Tool**

**insightsmagazine.org**

For updates, more information, and additional resources about the cases above, check out the *Insights* web site (insightsmagazine.org), where we provide links and information about other cases as well, including *The Good News Club v. Milford Central School*, No. 99-2036 (argued Feb. 28).

The question in this First Amendment case is, Can a public school that permits clubs—such as the Boy Scouts, Girl Scouts, and 4-H Club—to use its facilities after hours to "promote the morals of children" then forbid clubs that seek to promote the morals of children through religious instruction?

The full text of all recent Supreme Court opinions is available free of charge on the Supreme Court's Web site: www.supremecourtus.gov

Findlaw posts the parties' briefs in addition to the Court's full text opinions: supreme.findlaw.com/Supreme/resources.html

Cornell University offers a database of orders in pending cases as well as the Court's full text opinions: supct.law.cornell.edu/supct

Religious Freedom in America

# News from Capitol Hill

by Kenneth F. Fenske

## Review of Issues Facing Congress

*Who's in Charge?* The opening of the 107th Congress found Republicans holding on to a slim majority in the House and Democrats and Republicans splitting evenly in the Senate. Republican Vice President Richard Cheney is president of the Senate, permitting him to break tie votes and allowing the Republicans to retain all leadership positions, including committee chairs. Democrats gained equal representation on the committees, however, where most congressional decisions are made, and all senators may exercise their prerogative not only of putting a stop on judicial nominations for their states (an unwritten courtesy the Senate allows its members) but also of filibustering a piece of proposed legislation out of existence.

### Lame Duckers Finally Limped Home

The regular session of the 106th Congress finally adjourned in early November to prepare for the election of a new president and Congress, leaving behind an unenviable legacy of major legislation relating to education or juvenile justice. (See *Insights on Law & Society* 1.1 [fall 2000]: 27.) Federal money for educational programs wound up wrapped into a catch-all continuing resolution that restricted new funds for the Department of Education (DOEd). A major rewrite of the laws governing the juvenile justice system—although passed by both the House and the Senate—died when a joint congressional conference committee was unable to reconcile the ever-recurring conflict between advocates and opponents of additional restrictions on the sale and ownership of firearms.

A subsequent lame-duck session, while mainly preoccupied with election-year politics, did approve a record $42 billion budget for the DOEd. The $6.5 billion increase includes $1.2 billion for public school repairs, special education, and technology improvements. New money is also provided to train and hire 100,000 new teachers, subsidize after-school programs, and help pay college tuition.

While President Clinton signed the DOEd measure, the Bush administration will decide how the money will actually be spent. President Bush's priorities would earmark $5 billion for literacy enhancement and some $500 million to reward states with improved student achievement scores on standardized tests; laggard states, conversely, would be penalized by up to a 5 percent cut in federal school funding.

### 107th Congress Opens for Business

On January 3, the 107th Congress officially met for the first time and adopted a resolution to inform the president that both the House and the Senate were ready to receive messages, proposed legislation, nominations, or other matters important to the nation.

The Senate confirmed several top cabinet nominees—including those for Treasury, Defense, State, and White House chief of staff—on Inauguration Day and ultimately confirmed most of the other nominees, with subcabinet posts getting fewer than expected objections. With some openings remaining on the Bush team, the president called for a joint meeting of the congressional leadership of both parties to discuss the level of support for his "five-point plan, which entails education reform, tax cuts, a revamping of Social Security, a national missile defense system, and improving the nation's health care structure."

### Of Congressional Terms ... Bills ... and Clout

Each Congress lasts four years, no matter how its membership might change. Senators are elected for six-year terms; representatives for two years. New House members therefore appear in each new Congress, with huge turnovers possible, while the maximum change for Senators is only one-third (33 or 34, depending on the staggering of terms). Deaths, resignations, and new interim elections or appointments have no bearing on what is a Congress.

Bill and law numbers, on the other hand, are intrinsically tied to the Congress to which they apply. Say Rep. Jane Doe introduces H.R.144 in the 107th Congress and then resigns, hoping to fill a Senate vacancy. Whether or not she succeeds in her Senate bid, the 107th Congress remains as such, and H.R.144 remains an active House bill.

No duplicate bill numbers are permitted in either the House or the Senate. H.R.1 is followed by H.R.2; S.1 is followed by S.2. If enacted, a bill from the present Congress would be named Public Law 107-1, 2, 3, or 4, in the sequence it

*Kenneth F. Fenske served as executive editor at The Commerce Clearing House in Riverwoods, Ill. A specialist in the operations of Congress, he is a freelance legal writer in Chicago.*

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becomes law (whether by the president's signature or otherwise) during each two-year Congress.

The first bill introduced gets the lowest number. Because low numbers are more easily remembered than higher numbers (say, H.R.1 rather than H.R.4083-plus), and sponsors of bills with low numbers are usually committee chairs with the most clout in their respective areas of jurisdiction, lower numbers are favored, and they have the best chance of becoming law.

## Activity Ideas!

**1.** Share with students the list of early Senate bills. On the chalkboard, have a student list each bill number along with the sponsor's name. Ask which sponsors students recognize. What are the numbers of their bills? Explain how congressional bills are numbered and the significance of low versus high numbers. Have students research and report on the sponsors and their influence in Congress and elsewhere. Students should include broadcast and print interviews and other information about the sponsors' activities and viewpoints.

**2:** Have students read the bill descriptions. Which bills address issues they heard about during the election? What do the descriptions indicate about the sponsors' positions on these issues?

For a fuller listing and more details about bills already introduced in the 107th Congress, visit **insightsmagazine.org** (click "News from Capitol Hill").

## Early Senate Bills, 107th Congress

### Civil Rights

**S.19** (Daschle, D-S.D.) to protect the civil rights of all Americans.

**S.30** (Sarbanes, D-Md.) to strengthen control by consumers over the use of their personal financial and health information by financial institutions.

**S.73** (Helms, R-N.C.) to prohibit the provision of federal funds to any state or local educational agency that denies or prevents participation in constitutional prayer in schools.

**S.75** (Helms, R-N.C.) to protect the lives of unborn human beings.

*Senator Daschle, D-S.D.*

### Elder Law

**S.10** (Daschle, D-S.D.) to amend Title XVIII of the Social Security Act to provide coverage of outpatient prescription drugs under the Medicare program.

**S.21** (Daschle, D-S.D.) to establish an off-budget lock box to strengthen Social Security and Medicare.

### Election Law

**S.17** (Daschle, D-S.D.) to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform.

**S.22** (Hagel, R-Neb.) to amend the Federal Election Campaign Act of 1971 to provide meaningful campaign finance reform through requiring better reporting, decreasing the role of soft money, and increasing individual contribution limits.

**S.27** (McCain, R-Ariz.) to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform.

**S.28** (Gramm, R-Texas) to guarantee the right of all active duty military personnel, merchant mariners, and their dependents to vote in federal, state, and local elections.

*Senator McCain, R-Ariz.*

### Health Law

**S.6** (Daschle, D-S.D.) to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to protect consumers in managed care plans and other health coverage.

**S.24** (Specter, R-Pa.) to provide improved access to health care, enhance informed individual choice regarding health care services, lower health care costs through the use of appropriate providers, improve the quality of health care, and improve access to long-term care.

### Tax Law

**S.9** (Daschle, D-S.D.) to amend the Internal Revenue Code of 1986 to provide tax relief.

**S.11** (Hutchison, R-Texas) to amend the Internal Revenue Code of 1986 to eliminate the marriage penalty by providing that the income tax rate bracket amounts, and the amount of the standard deduction, for joint returns shall be twice the amounts applicable to unmarried individuals.

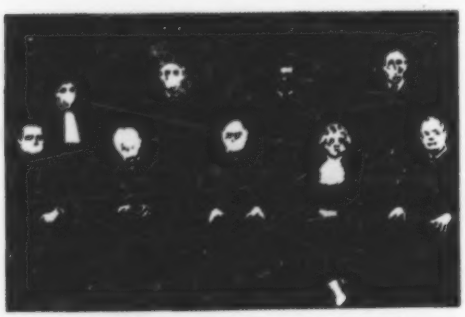
# Teaching with the News

by Wendy Bay Lewis and Charles F. Williams

## What Does the Law Say About Internet Filtering?

Learn about this very topical issue, one that concerns your students. Identify the related issues in this article and then consider the additional information, resources, and frequently asked questions on the Web at insightsmagazine.org, as well as ways to weave this timely issue into your curriculum.

Today's youngsters are growing up with the Internet much as today's adults grew up with television. However, the Internet is very different from television. First of all, it is much more like books and newspapers than TV because it provides access to limitless information and allows users to search for specific knowledge. Second, unlike television, which broadcasts information to its viewers, the Internet makes it possible for individuals to create and exchange information with everyone else online. Third, thousands of new Web sites are added to the Internet every day without any restrictions on the content they deliver. Not only do some sites contain obscene content, which is not protected by the First Amendment, but others may intentionally disseminate materials that are harmful to children.



*The Supreme Court struck down the CDA in 1996, saying the act interfered with adult rights in trying to protect children.*

Legislative efforts to control information on the Internet, even if intended to protect children, have failed because they ran afoul of the First Amendment's prohibition against "abridging the freedom of speech." In 1996, Congress passed the Communications Decency Act (CDA) to prohibit anyone from disseminating obscene or indecent materials to young people under 18. However, the Supreme Court struck down the CDA because it would have interfered with adults' rights, essentially by reducing Internet content to materials appropriate for children.

There is no doubt that government has a compelling interest in protecting children from harmful speech and the risks of being lured into situations that could threaten their lives or well-being. However, as a practical matter, it is difficult to control their access on the Internet. The primary vehicle for protecting children is the installation of filtering software on computers in schools and libraries. Filters block prescribed sites based on keywords and phrases. However, they also block access to sites that provide information about topics ranging from safe sex to religious beliefs.

A growing number of children "surf" the Internet for information and entertainment. Can adults feel confident that filters protect them? Unlike channel surfing on television, where adult programming is restricted to late-night hours, children could surf the Internet 24 hours a day. But is surfing likely to lead them to a place where they should not go? As Justice Stevens noted in the Court's opinion striking down the CDA, "the risk of encountering indecent material by accident [on the Internet] is remote because a series of affirmative steps is required to access specific material." Therefore, opponents of filters argue it is more important to give children the skills they need for safe surfing.

Congress is considering legislation that would make it mandatory for libraries and schools that receive federal aid for their Internet connections to install filters. While it is clear that the courts will strike down filters that interfere with adults' rights, the issue of filters on computers used by children is not yet resolved. Even if filters are used in schools, children need skills for surfing when they are using home computers, and therefore everyone agrees it is important to teach them skills for surfing safely, cautioning them about online activities that may be dangerous, and involving their parents in monitoring their online activities.

For the online text of this article, go to insightsmagazine.org

*Wendy Bay Lewis, founder of CivicMind.com, is a lawyer and educator residing in Bozeman, Mont.*

**Now come online to ...**

### ... Answer Questions Such as These

1. Does the First Amendment apply to the Internet?
2. What is an Internet filter?
3. Why do people support or oppose Internet filters in schools and libraries?

### ... Use These Links

For debates about Internet filters, visit these two sites:

- Justice Talking
  justicetalking.org/season_one_shows/web_censorship.html
- National Constitution Center
  constitutioncenter.org/sections/work/procon.asp

### ... Select Activity Ideas

1. **Stage a simulation.** Tell students to suppose they have been assigned a research paper about the likelihood that humans could survive on another planet. The teacher has told them not to use the Internet for research because there are too many offensive and inaccurate science fiction sites. A student's parent tells the school board that the teacher violated the student's First Amendment rights. The school board votes to place Internet filters on all computers. Assign students to all the different parts and hold a school board meeting to discuss the issues raised by the actions of the teacher and the school board.
2. **Write a policy statement.** Instruct students to write a Personal Research Policy Statement and then discuss students' statements in class. Each statement should include a statement of students' right to pursue knowledge, including unrestricted access to the Internet; their expectations for guidance from their teachers, such as learning how to find and evaluate credible sources; the role of their parents in monitoring the materials they select; how they will make personal choices about selecting electronic and print materials; and if and how they should monitor the selections of their peers.
3. **Conduct a survey.** Ask pairs of students to conduct a survey of people in different age groups to determine (a) their sources of information and entertainment, and (b) their attitudes about censorship. Students should interview people in the four age groups 14–19, 20–39, 40–60, and over 60 by asking them which sources of information and entertainment they most often view or listen to: television, the Internet, newspapers, radio, movies/videos, CDs/cassettes. Also, have students ask people in each group whether they have experienced censorship in their lifetime and whether they believe the censored materials should have been protected by the First Amendment or would have been protected at a different time in history. Compare and contrast students' results.

**See This Special Feature!**

The editors encourage subscribers to visit www.insightsmagazine.org to review the many articles and activities in the Law in the New Information Age edition of *Update on Law-Related Education* 22.2 (spring/summer 1998). Archived in .pdf format, pages may be downloaded by subscribers for educational use.

*The Lockhorns —*
*by Bunny Hoest & John Reiner*

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"SORRY, HERBIE, I CAN'T GO ... LORETTA'S READING ME THE BILL OF WRONGS."

# Religious Freedom in America

# Media Specialist's Corner

—Mary Kayaian, Consultant

## Here's a Useful Tool ...

We hope you will find this column useful whether you are a student doing further research on the issue's theme, a teacher preparing a lesson on the topic, or a library media specialist assisting students or teachers in tracking down additional resources for their course work. As a library media specialist, you might also find the column helpful as a selection tool for collection development purposes. In each edition we will include Web sites for primary documents mentioned in the issue as well as an annotated booklist that relates to the issue's topic. The online version includes full bibliographic information for the books and appropriate links with a brief annotation of contents. Your feedback is always appreciated.

### Primary Documents for Students

**The Maryland Toleration Act, 1649; odur.let.rug.nl/~usa/D/1601-1650/maryland/mta_i.htm**

Although the Maryland Toleration Act did not bring complete religious freedom, it did provide modest, impermanent protection for Catholics and set a precedent.

**Charter of Privileges Granted by William Penn, esq. to the Inhabitants of Pennsylvania and Territories, October 28, 1701; www.yale.edu/lawweb/avalon/states/pa07.htm**

In addition to establishing other laws, this example of a colonial charter prohibits non-Christians from holding government office.

**A Bill for Establishing Religious Freedom in Virginia, Thomas Jefferson 1785; w3.trib.com/FACT/1st.jeffers.html**

This bill ended the favored position of the Church of England in Virginia and the practice of using tax money to build churches and pay ministers. It also permitted people of other religions to worship as they saw fit.

**Letter to Thomas Jefferson from the Danbury Baptist Association, concerned about religious liberty in the new nation, Oct. 7, 1801; w3.trib.com/FACT/1st.jeffers.2.html**

***Torasco v. Watkins*, 367 U.S. 488 (1961); caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=367&invol=488**

This case ruled that a state could not make holding a public office contingent upon taking an oath stating a belief in God.

***Engel v. Vitale*, 370 U.S. 421 (1962); caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&navby=case&vol=370&invol=421**

This case determined that the reading of a nondenominational prayer at the state of the school day violated the "establishment of religion" clause of the First Amendment.

**"Religion in the Public Schools: A Joint Statement of Current Law." U.S. Department of Education, 1995; www.ed.gov/Speeches/04-1995/prayer.html**

This document was issued by a coalition of religious and educational organizations. Among its statements is that "students may be taught about religion, but public schools may not teach religion."

### Books

**Andryszewski, Tricia. *School Prayer: A History of the Debate.***

Discusses the Supreme Court cases and laws dealing with school prayer. A list for further reading, thoroughly documented source notes, and an index. Grades 7–9.

**Anglim, Christopher Thomas. *Religion and the Law: A Dictionary.***

Entries establish the historical context to help interpret current U.S. issues involving religion and the law; bibliography and alphabetical table of court cases.

**Dudley, Mark E. *Engel v. Vitale: Religion and the Schools.***

Covers landmark case in which the Supreme Court declared school prayer unconstitutional. Succinct overviews and related incidents throughout history. Legal terms explained in the text. Grades 5–9.

**Echo-Hawk, Roger C., and Walter R. Echo-Hawk. *Battlefields and Burial Grounds: The Indian Struggle to Protect Ancestral Graves in the United States.***

Describes the efforts of Native Americans to rebury ancestral human remains and grave offerings held by museums and historical societies, with particular emphasis on the Pawnees. Grade 7 and up.

**Flowers, Ronald. *That Godless Court? Supreme Court Decisions on Church-State Relations.***

Thematically organizes over 1,000 Supreme Court First Amendment decisions. Sections on different states of free exercise clause, religion in public schools, "Blue" laws, and brief history of religion and law leading to First Amendment.

**Haynes, Charles C. *Teaching About Religion in American Life: A First Amendment Guide.***

Downloadable from the Freedom Forum Online at www.freedomforum.org/religion/haynes/pringhaynesreligiguide99.asp

**Hurley, Jennifer A. *American Values: Opposing Viewpoints.***

Various authors debate what Americans value in politics, society, business, and religion. Includes critical thinking skills activities. Grade 10 and up.

**Roof, Wade Clark, ed. *Contemporary American Religion, Vols. 1 & 2.***

Describes aspects of U.S. religious life from 1965 to present. Each signed entry discusses topic and gives see-also references and bibliography. Major religions, smaller and fringe groups represented, as are individuals, symbols, traditions, beliefs, and practices. Examinations of the moral questions in a number of contemporary, often highly charged, political issues.

**Smart, Ninian, ed. *Atlas of the World's Religions.***

Looks at religion as a cultural force, existing in space as well as in time. Text detailed enough to qualify as an introduction to world religions; emphasizes and enhances the maps, charts, time lines, and photographs.

*Compiled by Michelle Parrini and Jennifer Kittlaus.*

Come online to link to professional book reviews and excellent online resources for librarians, students, and teachers looking for additional support on the topic of religious freedom in America.

*Mary Kayaian is the Library Media Center director/technology coordinator at the Jane Stenson School in Skokie, Ill.*

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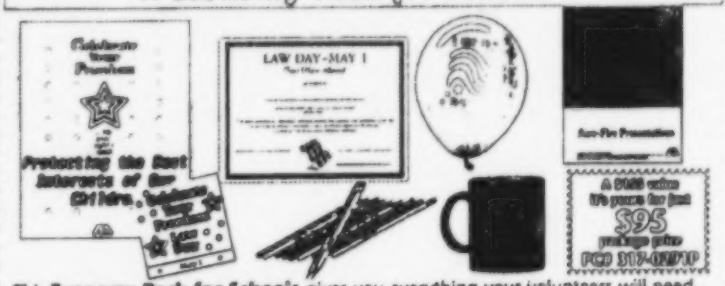


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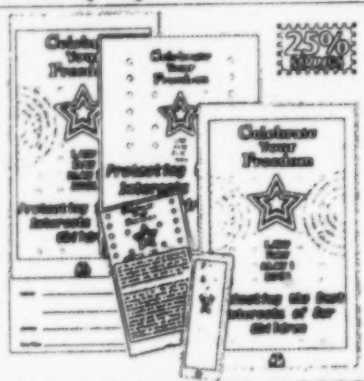


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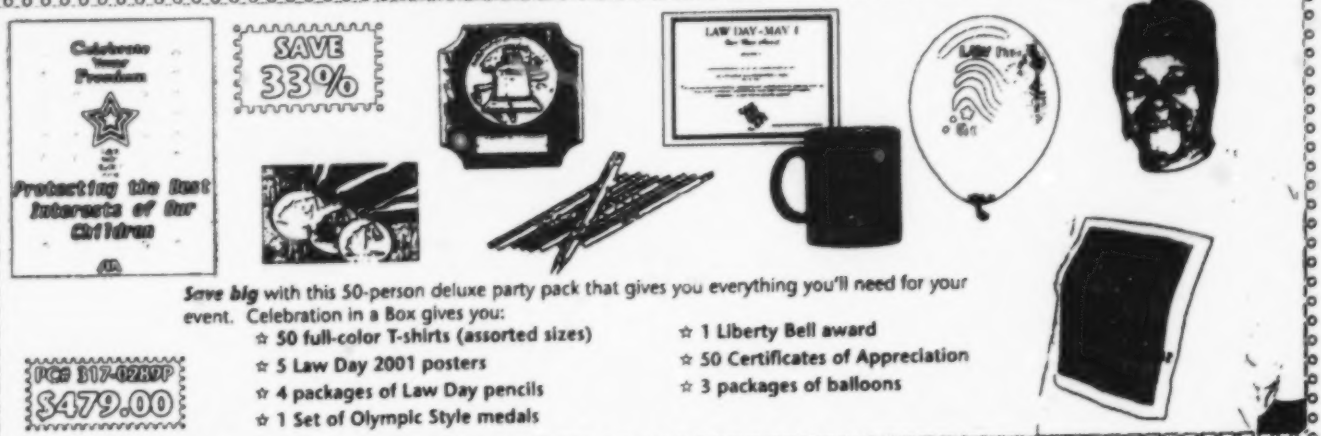


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Winter 2001
Vol. 1, No. 2

*A magazine for teachers of civics, government, history & law*


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